IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1110 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MULJIBHAI VALAJIBHAI PATEL - Opponent(s)

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Appearance :
Mr.S.P.Hasurkar, APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order passed by the learned Metropolitan Magistrate, Court No.4, Ahmedabad in Criminal Case

No.235 of 1992 dated 28th August, 1995, whereby the respondent was acquitted of the offence under Section 67 of Factories Act alleged against him.

2. The prosecution case, in short, was that on 30.10.1991 the complainant visited the factory of the accused and found certain irregularities under the Factory Act as well as Child Labour Abolition Act and therefore registered the complaint for the offence under Section 67 of the Factories Act punishable under Section 14(1) of the Child Labour Act. After recording necessary evidence, learned Magistrate acquitted the respondents of th offences with which they were charged. It is against the aforesaid judgment and order the present appeal has been filed.

3. Mr. S.P. Hasurkar, learned APP, appearing for the appellant submitted that the trial court has not properly considered the irregularities found by the Inspector at the time of his visit in its proper perspective and wrongly acquitted the accused.

4. It is the case of the respondent that a boy who was alleged to have worked as a child labourer was in fact sitting with the worker and he was not working in the factory. It is further submitted that there is nothing on record to show that the factory owner has paid any remuneration to the child labourer or there was no relationship between the factory owner and the child labourer and therefore the trial

Court has rightly acquitted the accused.

5. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of

the crime he is charged with.

6.1. I have heard learned Advocates for he respective parties. As a result of hearing and perusal of the record it is found from the record that the trial Court has considered the evidence of the worker who was working in the factory who has stated that a boy who was alleged to have worked as a child labourer was sitting with him and he was not working in the factory.

6.2. Apart from that, there is nothing on record to establish that the factory owner has paid any remuneration or there was any relationship between the factory owner and the child labourer to establish that a boy was working as a worker in the factory. In fact the prosecution has failed to prove the case against the respondent.

6.3. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> “... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

7. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed.

[K.S. JHAVERI, J.]

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